S.B.CIVIL WRIT PETITION NO. 2079/1994

Raj. State Road Transport Corporation, Jaipur & Ors. Vs. Bhajan Singh & Anr.

DATE OF ORDER :: 22nd May, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Sangeet Lodha, for the petitioners.
Mr. D.K. Parihar, for the respondent-workman.

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By this petition for writ a challenge is given to the correctness, propriety and validity of the award dated 12.10.1992 passed by the labour court, Bikaner in Industrial Dispute Case No.23/87. The appropriate government under its notification dated 24.4.1987 referred an industrial dispute to labour court, Bikaner for its adjudication in the terms, "whether termination of workman Sh. Bhajan Singh on 28.8.1984 by Divisional Manager, RSRTC, Bikaner is legal and justified? If not, then for what relief and amount the workman is entitled?

The respondent-workman was employed as Conductor on daily rate basis with employer Rajasthan State Road Transport Corporation on 10.10.1983. His name was struck off from the service roll on 28.8.1984. After striking off from service roll the petitioner submitted an application dated 25.1.1986 to the General Manager (Traffic), Rajasthan State Road Transport Corporation, Jaipur for re-employment in service of the Corporation. The General Manager (Traffic) by a communication

dated 12.12.1986 instructed the respondent-workman to submit an application afresh for getting fresh appointment with the Divisional Manager, RSRTC, Bikaner. In the communication aforesaid it was made clear that in the event of re-employment the workman shall not be entitled for any benefit for past services. In pursuant to the letter dated 12.12.1986 the respondent-workman submitted an application to the Divisional Manager, RSRTC, Bikaner, accordingly, by an office order dated 22.12.1986 the workman was employed afresh on daily rate basis as Conductor. In the order aforesaid also it was made clear that all the conditions mentioned in earlier orders shall be applicable while making re-employment.

After joining service in pursuant to the order dated 22.12.1986 the workman raised an industrial dispute with regard to his termination from service w.e.f. 28.8.1984 and that was ultimately referred for its adjudication to labour court, Bikaner by the notification dated 24.4.1987. Before the labour court, in reply to the statement of claim, the specific stand of the employer was that while accepting employment afresh the workman accepted the condition that he will not claim any benefit relating to his past service, and therefore, by acquiescence he cannot challenge the order of termination or also claim any benefit relating to past service. The labour court by the award impugned held the termination of the workman w.e.f. 28.8.1984 bad, and as such,

declared the workman entitled for receiving wages for the period from 28.8.1984 to 22.12.1986 i.e. the date of re-employment.

While giving challenge to the award impugned the contention of learned counsel for the petitioner is that the labour court materially erred while not appreciating the fact that the respondent-workman was re-employed under the order dated 22.12.1986 with the conditions referred in the communication dated 12.12.1986 to the effect that he will not claim any benefit for his past service and as such whatever claim made by the respondent-workman under the dispute concerned was unjustified as it was waived by him.

Per contra it is urged by learned counsel for the respondent-workman that the labour court on basis of the evidence on record gave a specific finding that the termination of the workman was illegal and unjustified, and therefore, rightly allowed wages for the period in question. It is further stated that the acceptance of fresh appointment does not amount acquiescence as pleaded on behalf of the employer.

Heard counsel for the parties.

It is not in dispute that at the first instance the workman after termination from service submitted an application dated 25.1.1986 to

the General Manager (Traffic), RSRTC, Jaipur for his re-employment. The General manager (Traffic) considered the same and by the communication dated 12.12.1986 instructed him to report to Divisional Manager, RSRTC, Bikaner to submit an application afresh for appointment. It was also made clear to the workman that in the event of the employment he will not be entitled for getting any benefit for past service. In pursuant to the communication dated 12.12.1986 the respondent-workman reported to the Divisional Manager, RSRTC, Bikaner and acting upon a fresh application, appointment was given to him under an order dated 22.12.1986 reiterating the conditions already made in the communication dated 12.12.1986. The respondent-workman, therefore, while getting fresh appointment was aware of the fact that he will not be having any right to claim the benefits relating to his past service. The workman got employment only after waiver of his right, if any, relating to past services. As such, the claim made by him by raising the industrial dispute, that was referred for its adjudication to the labour court, Bikaner by the appropriate government under the notification dated 24.4.1987, itself was not justified.

The labour court failed to appreciate that no right relating to past service was intact with the workman after getting fresh appointment, thus, the labour court also erred by allowing the wages for the period commencing from 28.8.1984 to 22.12.1986. In view of whatever said

above this petition for writ, therefore, deserves acceptance. The same, therefore, is allowed. The award impugned dated 12.10.1992 passed by the labour court, Bikaner is quashed. No order as to cost.

(GOVIND MATHUR),J.

jgoyal